Parsons (R. L.)

WITH THE COMPLIMENTS OF THE AUTHOR.

JURY TRIAL

OF THE INSANE.

By R. L. PARSONS, M. D.,

OF SING SING, N. Y.

NEW YORK:
VANDEN HOUTEN & CO., PRINTERS,
No. 60 Cedar Street.

JURY TRIAL OF THE INSANE.*

By R. L. Parsons, M.D., of Sing Sing, N. Y.

During the last session of the New York State Legislature no less than three different Lunacy Bills were urged upon the attention of the Assembly.

The first of these bills, which was introduced by a legal member from Brooklyn, had for its sole object the enforcement of a trial by jury, and their affirmative decision in the case of any and all alleged lunatics before they can be removed from their homes and placed in a hospital or other establishment for care and treatment. The Lunacy Bill drawn up by a committee of the Medico-Legal Society had the same provision in the original draft. On account of the earnest opposition of a medical member, this provision was finally left out; but one of the most learned jurists of the Society, who was a supporter of the original draft, refused to support the amended draft, because the provision for a jury trial, which he considered the most important of all, had been rescinded. An adverse criticism of the jury trial feature of the proposed laws was sent to the Medico-Legal Journal for publication, when a leading member of the publication committee ventured the remark that the method of procedure had been in practice in the state of Illinois for a number of years; and that, inasmuch as to the best of his

---

* Read before the Medico-Legal Society, September 12th., 1883.

knowledge, no serious objection had been made to the law, it might fairly be assumed that it was satisfactory.

These facts prove the existence of a somewhat widespread feeling in favor of the jury trial method of procedure; and also make it probable that renewed efforts will be made for the enactment of the measure. But the objections to the method are so many, and so serious in character, that its merits and demerits should be thoroughly discussed and understood, lest an unwise and oppressive law be enacted through lack of appreciation of its real character and necessary effect. This is the more important inasmuch as it is oftentimes more difficult to secure the repeal of bad laws, which have their origin in ill-founded, or unfounded, fears, than it was to secure their enactment.

There can be but one really substantial, or even plausible reason for the enactment of the law in question; that is the protection of the sane, the prevention of their incarceration as lunatics through malice, or through lack of ability to make a correct diagnosis of their mental condition. The insane might be injured, but certainly could receive no benefit from a jury trial.

There seems to be a popular belief to the effect that persons of sound mind are not unfrequently placed in asylums for the insane, by malicious and interested parties, through selfish motives; as to gain possession, or the control, of their property, to avoid annoyance, or to avoid the burden of their support. The fact that inmates of asylums are sometimes brought into court on a writ of *habeas corpus* with the object of securing their discharge as persons of sound mind, and that they sometimes are thus discharged, serves as a basis for this belief. The fact that persons duly committed to

asylums as insane are sometimes discharged by the Medical Superintendents as improper subjects serves to strengthen the belief. It is not altogether surprising that people of a suspicious turn of mind who are cognizant of these facts should greatly exaggerate the danger, and finally come to think that under existing laws almost any one might be seized and shut up as a lunatic.

But the great majority of those who are discharged under a writ of *habeas corpus* soon afterwards, or even at the very moment of their discharge, manifest unmistakable evidences of insanity. Dangerous lunatics have thus been declared sane by lay juries of more than average intelligence, and even by eminent judges, in opposition to the opinions of physicians of experience in diseases of the mind. It should not be forgotten in this connection that a writ of *habeas corpus* may issue when the patient has already nearly recovered, and hence that the finding of sanity, although apparently true, may prove nothing.

Of the very considerable number of persons who are discharged from asylums for the insane as improper subjects, almost all have manifested symptoms strongly indicative of insanity at the time of their commitment. A more prolonged investigation, especially if conducted by experienced alienists, would undoubtedly lead to a more correct diagnosis in a majority if not in all of the cases; but juries, lawyers, courts, and judges certainly would do no better. The delay caused by a jury trial might lead to a different result, as delay caused in any other way might do. But such delays might be and often would be highly prejudicial to those who were really insane, while the mistake of deciding that a sane person who appeared and acted like a lunatic really was a

lunatic would do little harm, and might even be of great service.

Of the many cases, more than one hundred in number, who were discharged from the New York City Lunatic Asylum as improper subjects, during a series of consecutive years, there was evidence of improper motives in only a single one. In this case the alleged lunatic had conducted in such an outrageous manner in the presence of the family physician that he believed the man to be insane, and for the safety of the family advised that he be sent to an asylum. The family acquiesced in the physician's view of the case, although they were well aware that the conduct on which the physician had based his opinion was merely the evidence of an irascible and ungovernable temper, from exhibitions of which they had often suffered for the twenty years before. The physician, however, was undoubtedly sincere in making the diagnosis of insanity, and the alleged lunatic really had no just reason to complain of being judged in accordance with his conduct. Indeed the plea of insanity would have been the best excuse he could have made if his acts had become criminal instead of being merely outrageous.

It is quite possible that changes might be made in our existing laws, which would render the method of investigation of cases of lunacy more thorough and exact and less liable to mistake than it now is. Still it should be borne in mind that the Lunacy Laws of the State of New York, regarding the commitment of the insane to asylums is more stringent in all essential particulars than the laws of Great Britain are; and more efficient for the protection of the sane than the laws of any other of the United States. Our present laws require that examiners in lunacy should have had three years' exper-

ience in the practice of medicine after graduation, that they should be reputable physicians and that they should be formally approved as such examiners on the ground of these qualifications by a judge of competent jurisdiction. The examiners are required among other things to make a formal written statement of the facts on which their diagnosis of insanity is based, over their signature and affidavit. Furthermore, before the alleged lunatic is fully committed as insane, these papers must be presented to a judge of a Court of Record and be formally approved by him on the grounds of the facts stated, and the ability and character of the examiners. If he should be in doubt regarding the legality of the forms, or the verity or sufficiency of the facts stated, the judge is required to withhold his approval; or he may order the presentation of such further evidence as may serve to satisfy his doubts.

Here certainly would seem to be sufficient protection for the sane against possible commitment as lunatics, without taking into account the safeguards against their continued detention, such as the examination and diagnosis of asylum physicians and the inspection of Lunacy Commissioners. Since juries, however, are required to find a verdict of acquittal in all cases of doubt, it is not impossible that they might include some sane men in their acquittals who would have been considered insane by medical examiners. But on the other hand they would be much more likely to make a false diagnosis of insanity on account of excentricities, the true nature and bearing of which they would be unable to understand. The fact is that juries in the State of Illinois have often made such mistakes. Dr. Dewey, Medical Superintendent of the Illinois State Asylum, at Kankakee, in an

article published in the Chicago *Tribune* on the method of determining the question of insanity by a jury trial, writes as follows, viz: "Numerous cases might be cited from the records of the State Insane Asylums in which (a) persons not insane have been declared so. Seven of this kind have occurred since the Northern Hospital at Elgin was opened. (b) Insane persons have been declared not insane. (c) The same person has been declared at one trial sane, and again within a few days, or weeks, or months, tried again and found insane, and this without any special change in the patient. Six cases of this kind have come to light among the patients at the Northern Hospital. It may well be doubted whether a parallel to this can be found in the records of any similar establishment in any other State covering the same length of time."

It would seem to be fairly established then, both by theory and by practice, that the jury trial system of investigating the question of insanity affords at the best no better protection for the sane than the ordinary methods of investigation by medical examiners does.

Under any system of investigation there is really much more likelihood of a failure to detect insanity when it exists than there is of mistaking a sane man for a lunatic; while the evil consequences of a mistake are liable to be much more serious in the former case than in the latter. There is no danger that a sane man will do injury to himself, to his relatives or to his estate by reason of his sanity; and if he be declared insane through malice or mistake the proper redress or remedy is likely to be applied before serious damage has been done to his estate. If any one is to suffer in reputation it will be those who have made the mistake or

have done the injustice. But the instances are very frequent indeed in which lunatics whose insanity was not detected or who were supposed to be harmless have killed themselves, or butchered their relatives, or squandered their property.

The jury trial method of making out the diagnosis of insanity is, at the best, very inadequate for the purpose. The diagnosis, especially during the early stages when watchful care and treatment are of most importance, is often difficult, and requires the ability and experience of men who have been specially trained in the making of such enquiries. The diagnosis of insanity lies as much within the sphere of training and experience of physicians as its treatment, or as the diagnosis and treatment of any other disease does. If the claim be made that petit juries can or will make more correct findings in cases of alleged lunacy than physicians would, it may be claimed with equal assurance that they would make a more correct diagnosis in a case of small-pox, or of fever; and that such patients shall have the advantages of a jury trial before being sent to a hospital for care and treatment. The placing of one or more physicians on the jury would not increase the advantages of the method. The physicians would either impose their views upon the rest of the jury through a laudable professional pride, and a consciousness that the lay members were really unfitted to undertake an investigation of the subject; or, as would perhaps be even more likely, the lay members would assume that they had been selected for the important duty of deciding on the facts, in cases of alleged insanity, because their sturdy common sense rendered them peculiarly fitted for the service, and so would underrate or ignore the opinions of the doctors.

The objections already made apply to juries of the most

conscientious and intelligent men in the community. But as a matter of fact the juries would rarely be composed of such men; but rather, in some part at least, of professional jurymen, of cranks, of men who have pet theories of their own on the subject of insanity, or of men who are curious to observe the aberrations of the insane, such as those who when they visit asylums ask to be shown the worst cases, and if they succeed in seeing them, are disappointed because they do not find them as bad as they imagined. The most competent physicians would endeavor to avoid such an unpleasant and incongruous duty, and so as a general rule would not serve.

The advantage to the people of trial by a jury of their peers does not consist in the superior intelligence and ability of twelve jurymen who have been chosen by lot from the common mass; but rather in the fact that these jurymen, in an important sense, stand between the people and the majesty of the law, or between the people and the possible oppressions of the wealthy and the powerful few. The natural sympathies of jurymen thus chosen are with the weak and on the side of mercy. If the jurymen have a reasonable doubt of the guilt of the accused, even although this reasonable doubt may arise from their own ignorance or lack of ability, they are instructed to give the accused the benefit of the doubt and bring in a verdict of "not guilty." But when the fact to be determined is not one of guilt, or of equity between the weak and the powerful, but whether there is disease of the body or the mind, it is most merciful and humane to make use of the means best adapted to find out the earliest beginnings of the disease, if it exists, to the end that the proper measures may be taken for a cure. A

petit jury certainly is not well adapted to judge of such facts, and its employment for such a purpose is not in the interest of truth, of justice, or of mercy.

Certain objections to the jury trial system of the insane are so well expressed by Dr. Andrew McFarland that the following quotations are made from his reply to my enquiries on the subject, viz.: "The Illinois law of which you inquire is injurious, odious, barbarous, damnable, and you may add as many more expletives to it as you please and still not say the truth in regard to its evils. Your questions naturally suggest their own answers, and every evil which the questions involve is felt to the full. And yet I don't think your scope of inquiry comprehends what we find the prime evil of all. The operation of the law in this State, (Illinois,) is perceptibly changing in the common mind the whole idea of the insane subject in his relation to treatment in an institution. The jury material picked up in the purlieus of court houses is now universally controlled by the idea that insanity is a charged offence and the hospital a penalty—the whole affair one of prosecution and defense. The working of the matter I may illustrate. A court some forty miles from here (Jacksonville,) refused to find a verdict in a plain case. The next day the patient was brought to me under the error that no verdict was needed in a private institution. In talking with the man who brought the patient, I learned with natural surprise, that he was one of the jurymen who had held out against returning a verdict of insanity, the day before, 'How's this?' said I, remarking the inconsistency. 'Oh! the man's crazy fast enough; but we couldn't find out that he'd done anything bad enough to be sent to the hospital for.' That answer explains what I believe is now almost universally the

jury attitude—the point to be adjudicated being simply *offense* and *penalty*, with all the leanings of course towards 'acquittal,' as the phrase is used.

"Going with this is another consequent evil which I view with still greater apprehension. It is the almost complete ignoring of medical testimony. A medical man who should bring into court any suspicion of science, or tincture of specialty of knowledge, had better carry his wares to some other market. He is certain to be snubbed, ignored, and most incontinently '*sat down on.*' A missionary clergyman in this city, away from home most of the time, had a fourteen year old daughter with extreme nymphomania—a desperate case, with every base instinct heightened to its extreme—profane, obscene and shockingly abusive of her parents. As the father's only resort, he applied to the Court, but the jury refused to find insanity, although the most eminent physician in the city was one of the jury and all right himself. In the father's despair he came to me; I fancied perhaps that evidence had not been forcibly presented, and advised another trial, which was granted next day. A leading juryman took the ground that the conduct of the girl was simply retaliatory of provocation by parents; that their training had been too 'Calvinistic' for the girl's taste; they watched her too much; were too strict with her, &c., &c. My own testimony, I soon found, injured the case more than helped. The 'vindicated' girl plunged at once into the wildest career of vice, and ended by suicide before she was twenty. Then there was plenty of cursing of that jury; but the multitude of such cases works no change. Now, every Superintendent of an Asylum in the State is most eloquently pleading for a change in this detestable system; the Board of State

Charities urges the change most forcibly; a bill is before the Legislature, reported favorably upon; the Chairman of the Judiciary Committee is a true champion of the reform; but all, as I fear, will amount to nothing, because there are a few fanatics who raise the hue and cry over an imaginary bugbear."

Thus far the principal objections which have been urged to the system of trial by jury, for the purpose of ascertaining and deciding upon the existence of insanity, have been on the grounds that such a method would not protect the sane would be inadequate to the proper investigation of this, or indeed of any other medical question, that it would cause erroneous and harmful views in the common mind on the subject of insanity and its treatment, and that it would bring about a feeling of distrust of physicians in relation to the diagnosis and treatment of insanity.

The main objection is, however, that such a method would be so highly prejudicial to the interests of the insane themselves that it ought to be rejected, even if the points already discussed were in favor of rather than against the method.

The jury trial process, or indeed any publicity whatever, is exceedingly repugnant to the friends of the unfortunate person who becomes insane. They instinctively have a feeling that the disease is a weakness which should be concealed from the public view. They wish to shield their relative, and they wish to shield themselves and their family from the suspicion of having a cognate weakness. They fear lest a public knowledge of their relative's insanity, which they hope will be temporary in character, may injure his prospects in life after recovery; or they fear lest such publicity may injure

the prospects of members of the family who have never been and may not be liable to become insane. These fears are not entirely without foundation. At all events they arise from the better feelings of our nature and should be respected. As a general rule, the friends of an insane person avoid publicity to the utmost extent possible. If the process of removal from home for treatment be such as to cause publicity, as a jury trial would do to an odious extent, hospital treatment would be delayed in many, if not in a majority of cases, until the prospects of recovery had been seriously compromised.

The process of a jury trial in itself would oftentimes be a cause of serious delay; especially in cases of acute insanity, or in which the court was at a distance.

In many cases, the process of transfer to court, and the incidents of the trial would be so great a tax on the physical powers as to endanger the life of the patient. In a still greater degree would such a tax endanger the prospects of recovery.

Not a few of the insane would be seriously injured by their appearance at court in the role of defendant and by the incidents of the trial. Some would be dangerously excited through fears about proceedings which they could not comprehend. Others would have their insane delusions confirmed by the arguments of advocates to prove their sanity, and by the apparent or real division of opinion which would be evident to them about their case. Many would get a fixed idea that they had been brought to court under some sort of criminal charge. Being conscious of their innocence of crime, they would think their commitment to a hospital an outrage or a mistake; looking upon the hospital as a place

of punishment and their detention as an act of gross injustice, by which they would be irritated and against which they would rebel.

It will readily be granted that many insane persons would not be seriously injured by a jury trial; as those who were in good health, and were too stupid or too absorbed to observe much of what was going on about them; or those self-satisfied monomanics who interpret whatever happens to their own advantage. But a jury trial could be of no possible benefit to such patients, while it would be of incalculable harm to many others. The interests of those who would be harmed by the trial entirely overshadow the supposed interests of the sane.

Although the arguments which have been adduced against a jury trial of the insane, apply for the most part to the trial as a legal method of placing lunatics in hospitals for care and treatment, many of these arguments and reasons are equally cogent against such trials as a means of ascertaining and deciding upon the mental status of the alleged lunatic or dement for any other purpose.

In order to ascertain the views and experience of Medical Superintendents of Asylums for the insane in the State of Illinois, regarding the diagnosis of insanity through the agency of petit juries, with especial reference to the influence of the trial on the insane defendants, the following letter was addressed to each of the Superintendents, and also to Dr. J. S. Jewell, a physician of Chicago, who is well known for his great erudition and large experience as an alienist, viz.:

Dear Doctor:—Will you favor me with your views in general regarding the Illinois method of placing the insane in hospitals through the intervention of a jury, and also on the following points, to wit:

1. Do friends of patients favor the method when they speak of it in comparison with less obtrusive methods of which they are cognizant?

2. Are some patients annoyed, excited, or otherwise injured by the method of procedure?

3. Is it your opinion that the early placing of insane patients under hospital treatment is in any degree hindered by the Illinois method of procedure?

4. All things considered, is it your opinion that the interests of the insane are promoted, or hindered, by the Illinois jury system of commitment?

The answers were unanimous and emphatic in deprecation of the law in question; and the only one from whom no reply was received has elsewhere expressed the same opinion in his writings. The Rev. Fred. H. Wines, Secretary, and William A. Grimshaw, Esq., member of the Illinois Board of Health, have published similar opinions. They object to the system not only on the ground of its injurious effect upon the insane, but also almost if not quite as strongly on other grounds.

Mr. Grimshaw writes as follows: "Is it not possible, that in practice, under the existing law of Illinois, one physician on the jury, and that one, perhaps, not a man versed deeply in his profession, or skilled in mental pathology, controls the verdict or determines the whole question submitted to the jury? or more physicians are summoned as witnesses to establish the fact of insanity? It is obvious then that the medical man on the jury, or the medical witness or witnesses, in most cases determine what is the condition of the patient or individual whose sanity is on trial. If the question of sanity or insanity is a medical question, why should we not

refer its decision, under proper rules, restrictions and safeguards, in the first instance to medical men."

Again: "In practice numerous cases have arisen, showing the injurious and sometimes fatal excitement incident to a jury trial. We believe that in the majority of cases, especially of females, the trial before a jury, with the publicity given thereto, and all the formula of serving a summons by an officer of the law, and the attendance for the first time of the subject of the trial at a court-house, is highly detrimental, and may be fatal."

Again: "We have known, in one county at least, two cases of males who were tried before juries, and upon the first trial the juries failed to find the men insane; subsequent trials proved each of them to be insane in a high degree, * * It was the opinion of medical men and experts, that the public trial of both the men referred to was injurious to them; and in one instance the highest type of mania was developed, and early death ensued."

Mr. Wines writes as follows regarding the alleged danger of being shut up as lunatics, to which sane men are said to be exposed: "If we turn from the argument *a priori* to consider that derived from experience, it must be said that nearly all the alleged cases of false imprisonment in hospitals for the insane prove, upon examination, to be cases in which the sanity of the party supposed to have been wronged is at least doubtful. And the list of cases of this description is by no means a long one, in comparison with the number of hospitals and their inmates.

"We do not see that whatever peril of false imprisonment may exist is attributable in any very large degree to the mode of inquest whatever it may be. If the insane hospital,

an institution believed to be in an eminent degree humane and necessary, is a menace to the liberty of the citizen, it is so under any form of inquest, since any investigation of his mental state may result in finding him to be insane, and this finding may not be in accordance with the fact. * * *"

Again: "If the inquest is to be so organized and conducted as to discourage the friends of persons actually insane from availing themselves of the benefits of the hospital in the early stage of the disease, and so to interpose a barrier between our State hospitals and the very persons for whose benefit they have been established, the primary object of this inquest has been defeated. Through our excessive and selfish zeal for the rights of the sane, the rights of the insane are, if not forgotten, at least not adequately guarded. The result is an increase of insanity in the community, with all that that implies—a peril far more active and insidious than the almost imaginary danger which excites our apprehension."

Again: "In the practical administration of this law, instances of peculiar hardships sometimes occur. A delicate woman, for example, a case of puerperal insanity, is dragged from her bed in winter, across the country, to the county-seat, and carried into the court-room, more dead than alive, before she can be taken to the hospital. Other cases are farcical, as where the court, to save the feelings of the patient, and prevent him from knowing that he is on trial, veils the proceeding under some flimsy pretence of a social gathering and friendly talk. The effect of the trial upon the patient is often terrible. He is impressed with the conviction that he has committed some crime, he knows not what; he believes himself to be consigned to a prison; possibly he

has a sense of having been dealt with unjustly and foully wronged; he looks upon the officers of the hospital as conspirators in a plot; it is long before this suspicion of them can be removed.

"The best place in which to gain a knowledge of the practical working of our present law is the city of Chicago. There the number of cases coming before the county court for decision is so great that a particular morning in the week is devoted to them. Thursday is known as 'Insane Day,' and on Friday the morning papers print regularly a synopsis of the proceedings and of the testimony, often under some sensational heading, and not only with the names of unfortunates, but their residences, giving street and number. We clip at random from a Chicago paper an account of one of these Thursday mornings in the county court. The reader will remark the style in which the report is written and remember that the court-room is open the public, and judge for himself what class of spectators are likely to be attracted by the proceedings:

"'*De Lunatico—An array of Alleged Insane People on Trial in the County Court—Insane Day.*

'Judge Loomis and two or three juries passed upon eighteen insane cases yesterday. The ante-room was crowded with candidates for the lunatic asylum and with witnesses. The cases were worked off with great rapidity, and in only two cases was anything of special interest elicited during the examination. The following is a summary of the proceedings:

'M—— Z——, a friendless Polish girl, 19 years old, presented a case for the sympathy and consideration of court and jury. Dr. B—— pronounced her case one of hysteriomania. The patient imagines that every one wants to kill her, and laughs and cries for terror twelve hours without interruption.

'I—— D—— was found not insane. But as he is most violent at times, and dangerous not only to himself, but to the community, the court promptly entertained a motion for a *new trial*, and continued the case until next week.

'E—— D——, a pretty girl of 26, who lives with her parents at No. — —— street, was tried twice. The first jury found her not insane, but the court *set the verdict aside*, as it appeared that one of the jurors had had some trouble with her brother, one of the witnesses, and was prejudiced against him. This same juror was a knowing fellow, and displayed his knowledge by asking Dr. B. if suicide meant *killing some one else*. He didn't think any insane person should be sent to a hospital for treatment, unless that person was liable to kill some one. Miss D—— showed by her actions that she was demented. She had had hysterics for years and was very melancholy. She had tried to buy laudanum at drug stores, with the view, as was supposed, of committing suicide. Some time ago she was a teacher, and the loss of her school and over-study were assigned as the causes of her mental state. The second jury found that she was insane.' (And other cases).

"Is it a matter of wonder that the friends of the insane men and women whose peculiarities are thus held up to public ridicule, shrink from the ordeal; that they have no confidence in it as a test of the mental condition of their loved ones; and that they desire a change in the law, in order that others may be spared the anguish which they have endured?"

Dr. Carriel, Medical Superintendent of the State Asylum at Jacksonville, writes as follows: "It is probably in the experience of every Superintendent in this State, as it certainly has been in mine, to notice how many have been deterred from making application for their friend's admission to a hospital, on account of the laws of the State requiring a

public trial, a judge, jury and lawyers, just as in a criminal proceeding. * * * * We live in hope that even in this State the day will come when the liberties of her sick and afflicted may be thought safe in the hands of the medical profession, whose prerogative it shall be to decide the question of the necessity or desirability of commitment to a hospital; then will one source of chronic insanity be removed."

Again: "As Superintendent of one of the Insane Hospitals of this State, the working of the law is satisfactory, and there are many features about it a Superintendent likes, so far as he is personally concerned. So far as the interests of the insane are concerned I hardly know of one redeeming feature in our method."

The views of Dr. Andrew M. McFarland, formerly Medical Superintendent of the State Asylum at Jacksonville, and now in charge of a private Retreat, have already been quoted in opposition to the Illinois law.

Dr. H. Wardner, Superintendent of the Southern Hospital at Anna, writes as follows, to wit:

"In reply to your questions under date of May 26th, I would say as follows:

"1. A considerable proportion of patients' friends dread the exposure of a jury trial and often try to avoid it. This is the case more particularly with sensitive and refined people.

"2. Some patients are greatly injured by the jury process; especially is such the case in puerperal cases. We received one young woman a week after confinement, who was carted ten miles across the country to the Court House for trial, who died the next day or two after admission.

"3. There is generally, or in a large number of cases, improper delay in placing patients under treatment, both on account of the dread of a public examination and on account of the expense incurred; and sometimes the juries, from some influence, fail to render a verdict of insanity in face of the facts.

"4. The interests of the insane are often hindered in consequence of the law."

Dr. R. P. Dewey, Superintendent of the Asylum at Kankakee, Ill., writes as follows, to wit:

"As to the jury trial for all insane persons, required by the laws of Illinois in every case, there are various objections to this mode of establishing insanity as an invariable rule. In the first place it is identical in nearly all points with criminal procedure. The insane person is 'arrested,' 'accused,' 'tried,' 'convicted' and 'sentenced,' substantially as if a criminal. An unfortunate influence is thus exerted on many of the insane, which is constantly apparent among the patients in our hospitals, an undue proportion of whom are impressed with the idea that they are unjustly accused of some crime, and tyrannically held in confinement. By making the process also an inquest in open court, compelling the presence of the prisoner, and the public delivery of all testimony matters which should remain private, are often forced into publicity without any good end being subserved. It would appear to be a natural right of the insane and their friends and families to be shielded in their misfortune from the public comment and gaze."

Again: "Mischief results from this state of affairs in many ways. The friends of the insane hesitate long before taking the disagreeable steps necessary to the treatment of the

patient in any asylum, and by far the most valuable time for beneficial treatment is lost; the insanity frequently becomes chronic and hopeless, and its victim a life-long burden upon family or State. Considerable numbers of the insane, who are able to do so, go to other States for treatment. The best feelings of all right-minded persons are outraged by seeing presented in court the depraved and unnatural acts and speech of otherwise reputable men and women. The testimony is apt to be of a peculiarly delicate nature." Dr. Dewey writes much more to the same effect.

Dr. Edwin A. Kilbourne, Medical Superintendent of the Asylum for the Insane at Elgin, Illinois, has expressed similar views in his annual report for 1878.

Dr. R. J. Patterson writes as follows: "If our lawmakers had desired with malice aforethought to invent an instrument of torture to insane persons and their friends, they could not have succeeded better than in the enacting of the present law. The law in its practical working is brutal and infernal.

"The friends of patients detest and abhor the law, and in almost every instance seek to evade it.

"Many patients who have susceptibilities and perceptions left become much disturbed and excited; all who are not demented feel it more or less, and those who are demented certainly do not need a jury trial.

"Insane persons, as a rule, are most likely to recover under *early* treatment in a well regulated hospital. The Illinois law is a hindrance to such early commitment and treatment. The friends of a patient refuse to take him into open court, as required by our law, until absolutely driven to it. The quiet, undemonstrative and harmless patients are

very largely detained at home until the case becomes chronic and incurable. Patients are often removed to other States to avoid the jury trial, which is hateful to all persons interested.

"The interests of the insane are in no wise promoted, but are hindered vitally. In more than four hundred patients admitted to this small place, no one has willingly complied with the law, but all have sought to evade it."

Dr. J. S. Jewell writes as follows: "Many patients are annoyed and in my opinion made worse by the noisy public ordeal through which they must pass, according to the Illinois law.

"It is my opinion that one result of the Illinois law is to prevent in many cases the early commitment of patients to an asylum. I am certain of this. But in what *per cent.* of cases the result appears I do not know. I will say, however, it is my opinion the proportion of cases is so large as to excite surprise if it could be certainly known.

"As compared with other wiser laws now in force in other States as well as abroad, the Illinois law in question results in its operation in harm rather than benefit to the insane."

The remaining Medical Superintendents of the State have written in the same strain and to the same effect.

A remark made many years ago by The Right Honorable The Earl of Shaftesbury, that veteran in the advocacy of English Lunacy reforms, to the effect that the doors of Asylums for the Insane open within too easily and outwards with too great difficulty is still often quoted. The gentlemen who quote his Lordship's opinion so approvingly are probably not aware that an enlarged experience has given him reason greatly to modify his former opinion. In 1877, his

Lordship testified as follows before a Parliamentary Commission of Inquiry "*into the operation of the lunacy law, so far as regards the security afforded by it against violations* of personal *liberty*." The answers of his Lordship and of other eminent alienists before the Commission are here quoted in order to show that their opinions in regard to the undesirability and danger of increasing the legal difficulties in the way of placing the insane in institutions for care and treatment, whether by subjecting them to a jury trial, or otherwise, substantially agree with the opinions already expressed and quoted in this paper, to wit:

"Q. Is it your Lordship's opinion that the admission of patients into asylums is now sufficiently guarded?"

"A. I think so."

"Q. Would you say the same with regard to their detention there? Is it not the case that they are sometimes kept there longer than is necessary?"

"A. I do not think they are so now; it was rather my opinion in 1859 that under some circumstances they may have been detained beyond the time that was absolutely necessary, but then I think a great deal was to be said in extenuation of that. It is a great responsibility to send out a patient upon the world, both with respect to the patient himself and in respect to society, before you are satisfied that he is cured, or, at any rate, in such a state that he can be safely trusted. Since 1859, I should very much modify the opinion I then gave."

His Lordship further testifies as follows, to wit:

"A. What I state shows the absolute necessity of great precaution; the absolute necessity of paying great attention to the earliest stage of the disorder, and though I could by

no means render admission into asylums more easy than it is, I most undoubtedly would not render it more difficult, because I am certain that society is in great danger. * * * * We have a duty to the patient and a duty to society. We have a duty to the patient to see that he is not needlessly and improperly shut up, but we have also a duty to society to see that persons who ought to be under care and treatment should be under care and treatment, and moreover that they should not be set at large before they can be considered safe to mix in society."

Again: after referring to the fact that ordinary observers do not appreciate nor notice the earlier symptoms of insanity, he continues as follows, to wit: "I have no particular suggestions of my own to make; I only give it as a striking fact, and one that should put us very much on our guard against juries, because they never deal with the matter unless there is an overt act, which overt act, ninety-nine cases out of one hundred, is a proof that the disorder in incurable."

"Q. Your Lordship has, I think, already expressed an opinion with regard to the intervention of public authority. Would you consider that the prospects of cure derived from placing a patient under early treatment would be considerably interfered with, if the laws were altered so as to necessitate the intervention of the magistrate in this country?"

"A. Most undoubtedly; the great fear in England of so many people is publicity, and anything that tends to bring the patient before the public and to make the case of a patient notorious would induce people to keep that patient so long as they could before they submitted him to the treatment of an asylum, or of a single house. It would interfere very materially with it."

"Q. On the whole your opinion is most decided that the intervention of the magistrate would be injurious to the person as regards his recovery, and no protection to him as regards his liberty?"

"A. None whatever; I think it would take away nine-tenths of the liberty he now has. I cannot conceive anything which to my mind would be worse. I will do anything I can to protect the patient, but I know, if I were to assent to what is proposed, I would consent to what would be irrearable injury."

C. S. Percival, Secretary of the Commissioners of Lunacy, says: "In my opinion, the medical certificates are the most important safeguards to the personal liberty of the subject, and the present forms are sufficient."

Mr. Wilkes, Commissioner in Lunacy, says: "The present law is quite sufficient to protect the liberty of the people."

Dr. Lockhart Robertson would have, as a Commissioner, "a leading physician in the district (asylum district) to renew the medical certificates upon which the patient was originally committed."

Dr. Bucknill says: "I think the principle should be to make the admission as easy as possible, to provide for early treatment."

Dr. Maudsley "was strongly of the opinion that the present forms for the admission of private patients are quite sufficient, and if made more stringent, would operate injuriously to their early treatment and chances of recovery. * * * If it is considered desirable, as I have heard suggested, that the medical officer go before some public officer before they are acted upon, it seems to me no public officials would be better qualified than the commissioners (of lunacy) to whom exact

copies are now sent within twenty-four hours. If the matter were really entered into in each case it would be a very anxious responsibility—a formidable matter to undertake—if not, it would become a mere matter of routine, which, adding to the publicity, and adding to the expense, and adding to the delay of getting a patient under care, would only make treatment more difficult than it is."

"Q. You think that if there were more care taken, or more delay in committing or consigning patients to asylums, their cure would be more doubtful?"

"A. Undoubtedly; there are two great objects to be kept in view with regard to the detention of patients: they are put under care, not only for their own safe custody, because they are dangerous to themselves and others, but another and most important object, if insanity is to be cured, is, that they be put under care for treatment. and early, because recoveries are entirely in proportion to the early stage in which treatment is adopted. If regulations are made more stringent than they are now—and indeed the present regulations operate, to some extent, in that direction—the friends of patients will, instead of sending them from home, as is most essential in a case of insanity—unlike in this respect other diseases—keep them at home under improper conditions, and so very much injure their chance of recovery. It is my experience, as a physician, that the friends shrink very much that [going through forms]. They dislike the supposed publicity of it; they dislike the formally pronouncing him a lunatic; and they will not remove him in consequence."

Dr. Patterson, after making the greater part of the above quotations in an open letter to the Board of State Commissioners of Public Charities of the State of Illinois, remarks

as follows: "Those of the medical profession in the United States, who have given most thought to the welfare of the insane, and who are, therefore, most entitled to hold opinions, substantially agree with the Earl of Shaftesbury, the English Lunacy Commissioner, and the medical profession in England and Scotland."

The design of this paper has been to show, not that the ordinary medical methods of investigating the fact of insanity, of placing the insane in asylums, of supervising their management, of assuring their release at the proper time, might not be improved in some respects, but simply to show that the method of trial by jury is in the nature of the case illy adapted to the purpose, would afford no substantial protection to the sane, and would be the inevitable cause of such grave injury to the insane as to render its employment unwise and atrociously inhumane, even if it were proved to accomplish the good results claimed of protecting the sane from false imprisonment.